S.B.CIVIL WRIT PETITION NO.2474/1990.
(Bal Kishan Garg v. The State of Rajasthan & Others.)

DATE OF ORDER: FEBRUARY 16, 2005

HON'BLE MR. JUSTICE R.P.VYAS

Mr.M.Mridul, Senior Advocate, assisted by
Mr.R.N.Upadhyay, for Petitioner.
Mr.C.L.Jain, for Respondents.

REPORTABLE **BY THE COURT:**

By the instant petition, the petitioner has prayed that the order dated 13.3.90 (Annexure 7) , passed by the Rajasthan Civil Services Appellate Tribunal, Rajasthan, Jaipur, as well as the notice dated 9.4.85 (Annexure 4), issued by the Collector, Chittorgarh be declared invalid and be quashed, with all consequential benefits.

The facts giving rise to the instant petition are that Shri Bal Kishan Garg – petitioner was appointed as Patwari vide order dated 25.12.1954. For the first time, vide order dated 10.10.75, the petitioner was given compulsory retirement under Rule 244 (2) of the Rajasthan Service Rules, 1951 (for short, 'the Rules,1951'). Thereafter, the aforesaid order of compulsory retirement was revoked by a subsequent order dated 4.5.77 and the petitioner was taken back in service.

For the second time, the petitioner was given compulsory retirement vide order dated 7.4.81, which was challenged by

way of appeal before the Rajasthan Civil Services Appellate Tribunal, Jaipur. The appeal of the petitioner was accepted by the Tribunal vide order 28.4.83 and the order of compulsory retirement dated 7.4.81 was quashed and set aside.

For the third time, the petitioner was given a notice dated 9.4.85 (Annexure 4) by the Collector, Chittorgarh, informing him that the compulsory retirement is being given to him on the expiry of three months' period from the date of service of the notice.

Against the aforesaid notice, the petitioner preferred an appeal before the Rajasthan Civil Services Appellate Tribunal, Jaipur, which was dismissed by the Tribunal vide order dated 13.3.90 (Annexure 7).

Being aggrieved by the notice dated 9.4.85 (Annexure 4) and the order of the Tribunal dated 13.3.90 (Annexure 7), the petitioner has preferred the instant petition.

It is submitted by the learned counsel for the petitioner that vide order dated 13.7.84, the petitioner was placed under suspension under Rule 17 of the Rajasthan Land Revenue (Land Records), Rules, 1957 (hereinafter referred to as 'the Rules, 1957'). Thereafter, vide order dated 23.5.84, he was reinstated back in service. However, a memorandum dated 27.9.84, issued by the Collector, Chittorgarh, was served upon the petitioner, informing him that the Department has proposed to hold an inquiry against him under Rule 177 of the Rules, 1957 on the

basis of the charges set out in the charge-sheet and the statement of allegations. The petitioner sought certain documents from the Department for giving reply to the aforesaid memorandum, charge-sheet and statement of allegations. After receiving the desired documents, he gave reply and denied the allegations.

It is further submitted by the learned counsel for the petitioner that vide order dated 17.1.85 (Annexure 11), an Inquiry Officer was appointed to enquire into the matter. But, by a subsequent order dated 12.12.86 (Annex.12), the inquiry initiated against the petitioner, was dropped. The petitioner's suspension was also revoked and pay for the period of suspension was ordered to be paid to him.

It is also submitted by the learned counsel for the petitioner on account of leaving the Headquarters without permission and not participating in the monthly meeting dated 10.11.70, the petitioner was punished by stoppage of one Annual Grade Increment without cumulative effect vide order dated 22.4.72.

Again, vide order dated 27.3.73(Annexure 13), the petitioner was given punishment of withholding of two Annual Grade Increments with cumulative effect on the ground that he did not deposit a sum of Rs.36.18 realized by him on 30.7.70, till 2.10.70. Thereafter, vide order dated 3.4.74 (Annexure 14) also, the petitioner was awarded punishment of withholding of one

Annual Grade Increment without cumulative effect, on the grounds that his work was unsatisfactory and he was not following the instructions of the Girdawar.

Thereafter, vide order dated 28.7.79, the punishment of recorded warning was imposed upon the petitioner on the grounds that he did not fulfill the target of recovery for the year, 1978-79.

Sofar as the imposition of punishment of withholding of one Annual Grade Increment without cumulative effect vide order dated 23.5.83 is concerned, there is no such order and only a reference of the order dated 29.8.83 (Annexure 15) has been made. This order was passed by the Sub-Divisional Officer (S.D.O.), in the appeal preferred by the petitioner against the orders of punishment dated 3.12.70 and 11.3.71. By each of these two orders, the punishment of withholding of one Annual Grade Increment with cumulative effect was imposed upon the petitioner, which was reduced to the stoppage of one Annual Grade Increment only with cumulative effect.

It is next submitted by the learned counsel for the petitioner that the orders of upholding the compulsory retirement on which the reliance has been placed by the Tribunal, are the happenings which occurred prior to the year, 1974, except the punishment of recorded warning dated 28.7.79 which pertains to the year 1978-79. So, according to the learned counsel, the past history of the petitioner cannot be taken into

consideration for recording the adverse entry. The adverse entry for the year, 1978-79, was made in the Confidential Report of the petitioner, but the same were communicated to him vide communication dated 17.6.79. The petitioner made a representation against the aforesaid adverse entry, which was accepted and the adverse entry was set aside vide communication dated 14.7.81 (Annexure 16).

Lastly, it is submitted that no adverse entry has been communicated to the petitioner after his reinstatement, which was effected in the year, 1983. The order dated 28.7.79 which is now relied upon for upholding the order of compulsory retirement, was considered by the Tribunal in its earlier judgment and the Tribunal itself held that it was not sufficient to effect retirement of the petitioner. It is also submitted that it is a settled law that if compulsory retirement is effected while an enquiry is pending against a person, particularly when he is under suspension, is penal in character. So, in order to circumvent the inquiry, it was dropped and the petitioner was given compulsory retirement. Apart from that, the punishment of the stoppage of the Annual Grade Increment without cumulative effect was in respect of the happenings of the years, 1970-71 and 1971-72 and these punishments were awarded vide orders dated 3.12.70 and 11.3.71. The punishments on which the reliance has been placed by the Tribunal for upholding the compulsory retirement are the past happenings which took

place prior to 7 to 8 years of his compulsory retirement, and the order of compulsory retirement has been passed without application of mind.

In support of his contentions, learned counsel for the petitioner has placed reliance on A.K.Roy v. Union of India (AIR 1982 SC 710), Zamindara Motor Transport Co-operative Society v. R.T.A, Bikaner and Others (1999 (1) W.L.C. 348), Jagir Singh v. Rambir Singh (AIR 1979 SC 381), Supreme Court Bar Association v. Union of India, (1998) 4 SCC 409 and E.S.P.Rajaram and Others v. Union of India & Others [(2001) 2 SCC 186], which are of no help to the petitioner.

Learned counsel for the petitioner has also referred to the decisions given in R.S.E.B. v. Manohar Lal (1991 (1) RLR 239) and Baidyanath Mahapatra v. State of Orissa & Another (JT 1989 (3) S.C.360). In R.S.E.B. v Manohar Lal's case (Supra), the petitioner was Accounts Officer in RSEB. There were no adverse remarks in the Annual Confidential Reports in his service record, except that in one year, where a mention about the pendency of the criminal case was made, but Final Report (FR) has already been filed. Another adverse entry which was made after the petitioner was compulsorily retired, is hardly of any significance. In this situation, in order to circumvent the departmental enquiry, the order of compulsory retirement was passed, which was quashed by the Court and was held to be bad in law. But, in the instant case, there were adverse entires during the entire

service tenure of the petitioner. His case was recommended by the Screening Committee for compulsory retirement. He was twice given opportunity to improve his work-performance, but he did not improve the same. Then, ultimately, under Rule 244 (2) of the Rules, 1951, he was given compulsory retirement in public interest after application of mind.

In the case of Baidyanath Mahapatra (Supra), the question for consideration was whether the Review Committee was justified in making its recommendations on the basis of adverse entries awarded to the appellant in remote past, especially when the appellant had been promoted to the post of Superintending Engineer in 1976 and he had further been permitted to cross Efficiency Bar in 1979. The adverse entires for the years 1969 to 1976 had lost all significance, because, in spite of those entries, he was considered to be an intelligent and efficient officer and he was promoted to the post of Superintending Engineer. Therefore, in these circumstances, the order of pre-mature retirement was quashed. But, in the instant case, the adverse entires were recorded during his entire service career. He has put the Government to losses while not collecting the revenue and achieving the target point. He also violated the instructions of Girdawar. The Reporting Officer recorded in his ACR that he does not take interest in the official work. Nor he completes the work in time. He is very poor in the work. He was also described as 'a worthless and hopeless employee' in the

ACR. The Head of Department – the Collector, Chittorgarh also agreed to the aforesaid remarks of the Reporting Officer. Therefore, in such a situation, the aforesaid authorities are of no help to the petitioner.

It is submitted by the learned counsel for the respondents that during the tenure, his service record was not found satisfactory. In the year, 1968-69, it was ordered by the Authority that the petitioner was not true to his duties and, as such, his conduct was not find satisfactory. In the year, 1969-70, the petitioner did not achieve the target of satisfactory revenue collection and caused losses to the State Government. In the ACR (Ex.R/1), it was reported by the Reporting Officer that the petitioner is not a responsible employee. Not only that, even the Collector, Chittorgarh also agreed with the aforesaid observations of the Reporting Officer. Therefore, it is submitted that since the conduct of the petitioner was not found satisfactory, he is not entitled to be retained in the Government service.

It is further submitted by the learned counsel for the respondents that the petitioner was given punishment on 28.7.79. Even after the pronouncement of the judgment by the Tribunal, the petitioner did not serve the Department satisfactorily, therefore, looking to his previous record, the petitioner has been given compulsory retirement. The Tribunal has considered the facts in its right perspective.

It is also submitted by the learned counsel for the respondents that the conduct of the petitioner, as well as his Annual Confidential Reports (ACRs) and Annual Performance Appraisal Reports (APARs) , service file and service book etc. were considered by the Screening Committee with all objective considerations and with subjective satisfaction and, thereafter, it came to the conclusion that the retention of the appellant in service was not in public interest. It is next submitted that during the course of enquiry, the petitioner failed to achieve even the recovery target and he put the Government in losses. Not only that, even day -to-day activities of the petitioner were not found satisfactory, so, he was given rightly compulsory retirement by the Government.

I have heard learned counsel for the parties.

It may be mentioned that the issue of compulsory retirement has been considered in a catena of judgments by the Hon'ble Supreme Court, particularly in Baikunthnath Das and another v. Chief District Medical Officer, Beripada and another (1992 (2) SCC 211), wherein, after considering all its earlier judgments, the Hon'ble Supreme Court observed as under :-

> (i) Any order of compulsory retirement is not a punishment. It implies no stigma nor any suggestion of misbehaviour.
> (ii) The order has to be passed by the Government on forming the opinion that it is in the public interest to retire a Government servant compulsorily. The order is passed on the subjective satisfaction of the Government.

(iii) Principles of natural justice have no place in the context of an order of compulsory retirement. This does not mean that judicial scrutiny is excluded altogether. While the High Court or this Court would not examine the matter as an appellate court, they may interfere if they are satisfied that the order is passed (a) mala fide, or (b) that it is based on no evidence, or © that it is arbitrary – in the sense that no reasonable person would form the requisite opinion on the given material; in short, if it is found to be a perverse order.

(iv) The Government (or the review Committee, as the case may be) shall have to consider the entire record of service before taking a decision in the matter of course attaching more importance to record of and performance during the later years. The record to be so considered would naturally include the entries in the confidential records/character tolls, both favourable and adverse. If a Government servant is promoted to a higher post notwithstanding the adverse remarks, such remarks lose their sting, more so, if the promotion is based upon merit (selection) and not upon seniority.

(v) An order of compulsory retirement is not liable to be quashed by a Court merely on the showing that while passing it uncommunicated adverse remarks were also taken into consideration. That circumstance by itself cannot be a basis for interference."

In D.K.Misra v. Union of India and Others (1997 (6) SCC 227), the Hon'ble Supreme Court held that the power to give compulsory retirement is absolute, but the Authority must form an opinion that the retirement was in public interest.

In Staya Prakash Gupta v. State of Haryana (1997 SCC (L&S) 1764), the Hon'ble Supreme Court upheld the order of compulsory retirement. In Haryana State Electricity Board v.

K.C.Gambhir (AIR 1997 SC 2403), the Hon'ble Supreme Court held that not only un-communicated adverse entires, but also the entries on which representations are pending consideration, can be taken into account while giving compulsory retirement.

Similarly, In H.G.Venkatachaliah Shetty v. Union of India and Others (1997) (11) SCC 366, the Hon'ble Supreme Court held that even solitary uncommunicated adverse remarks may form the basis of passing an order of compulsory retirement.

In State of Madhya Pradesh v. Indra Sen Jain (1998 (1) SCC 451), the Hon'ble Supreme Court held that the Authority was justified in passing the order of compulsory retirement in public interest as it came to the conclusion that the employee was not having good relations with public and there were allegations of corruption against him. It further observed that it is not necessary for the Authority to recite in the order that action was initiated in public interest. The only requirement is that there must be material to initiate such action.

In State of Punjab v. Gurdas Singh (1998 (4) SCC 92), the Supreme Court observed as under :-

> " Before the decision to retire a government servant prematurely is taken, the Authorities are required to consider the whole record of service. Any adverse entry prior to earning of promotion or putting of efficiency bar or picking up higher rank is not wiped out and can be taken into consideration while considering the over-all performance of the employee during the whole of his tenure of service whether it is in public interest to retain him in service. The whole record of service of the employee will include any uncommunicated adverse entries as

well.”

In State of U.P. And another v. Bihari Lal (1994 (Suppl.) 3 SCC 593), the Hon'ble Supreme Court observed as under :-

> “It is overall assessment of the record, the authority would reach a decision whether the government servant should be compulsorily retired in public interest. In an appropriate case, there may not be tangible material but the reputation of officer built around him could be such that his further continuance would imperil the efficiency of the public service and would breed indiscipline among other public servants. Therefore, the Government could legitimately exercise their power to compulsorily retire a government servant. The Court has to see whether before the exercise of the power, the authority has taken into consideration the overall record even including some of the adverse remarks, though for technical reasons might be expunged on appeal or revision. What is needed to be looked into is the bona fide decision taken in the public interest to augment efficiency in the public service. In the absence of any malafide exercise of power or arbitrary exercise of power, a possible different conclusion would not be a ground for interference by a Court.”

In State of Gujarat and Others v. Suryakant Chunnilal Shah (1998 (8) JT 326), the Hon'ble Supreme Court observed that when an appropriate authority forms bonafide opinion that compulsory retirement of the Government employee is in the public interest, then the Court would not interfere with such order.

In Madan Mohan Choudhary v. State of Bihar (1999 (1) JT 459), the Hon'ble Supreme Court considered a larger number of its earlier judgments and held that adverse entires recorded in normal course at any point of time, i.e, at any remote stage, can

be taken into consideration, as examining the entire record of the case would include any past entry at whatsoever distance of time it had been recorded. The only requirement is that the entry should be recorded in the normal course.

In Rajat Baran Roy & State of West Bengal & Others (1999) 4 SCC 235), the Hon'ble Supreme Court has held that the power of compulsory retirement should be exercised in public interest and for that, the Authority must be satisfied that there was sufficient material particulars to pass such an order.

In Baikuntha Nath Das v. Chief District Medical Officer, Baripada ([1992] 2 SCC 299), the appellant was appointed as a Pharmacist by the Civil Surgeon and was serving as such under the State Government. During the course of his service, the successive Civil Surgeons had entered several adverse entires in his CR which had not been communicated to him. After he had put in the requisite period of service, a Review Committee, having regard to the uncommunicated adverse entries and other material, took a decision that he be compulsorily retired from the service. Accordingly, the State Government passed an order of his compulsory retirement. The appellant challenged the order in the High Court. The High Court looked into the proceedings of the Review Committee and confidential character rolls of the appellant and opined that the order of compulsory retirement was passed not merely upon the uncommunicated adverse remarks, but also on other material and that material did not

justify the conclusion that the said remarks were not recorded duly or properly. The High Court, therefore, dismissed the appeal. Against which, he preferred an appeal before the Supreme Court. The Supreme Court held that in the aforesaid circumstances, it cannot be said that the order of compulsory retirement suffers from mala fides or that it is based on no evidence or that it is arbitrary. An order of compulsory retirement is passed by the Government on forming the opinion that it is in the public interest to retire a Government servant compulsorily. The order is passed on the subjective satisfaction of the Government. The Government has to consider the entire record of service before taking a decision to give compulsory retirement in public interest to the Government servant. The Supreme Court also held that the order of compulsory retirement is not liable to be quashed by a Court merely on the showing that while passing it, uncommunicated adverse remarks were also taken into consideration. That circumstance by itself cannot be a basis for interference.

In the instant petition, the case of the petitioner has been examined in view of the aforesaid legal position. The power to prematurely retire a Government servant conferred by Rule 244 (2) of the Rajasthan Service Rules, 1951 postulates two pre-requisites, viz. (i) in public interest to retire the Government Servant and (ii) that he has completed 25 years of qualifying service or 50 years of age. Thus, there is no dispute about both

the aforesaid pre-requisites of compulsory retirement. The petitioner has been awarded the punishment of withholding of annual grade increments without cumulative effect. Thus, it cannot be said that there was no material before the Authority to form an opinion for giving him compulsory retirement under Rule 244 (2) of the Rajasthan Service Rules, 1951. In fact, as laid down in the case of Union of India v. J.N.Sinha (1971 (1) SCR 791), the purpose of Rule 244 (2) conferring power on the Government to give compulsory retirement to the Government servant prematurely is to energise its machinery by "Chopping of the dead-hood". Apart from that, it can also not be said that the entire past service record, as well as ACRs and APARs cannot be taken into consideration by the Authority-concerned while passing the order of compulsory retirement in public interest.

It may be mentioned that the minutes of the Screening Committee held on 28.3.85 were produced before the Tribunal, in which the decision to recommend compulsory retirement of the petitioner was taken. The Screening Committee is generally composed of high and responsible officers, the power is vested in the Government alone and not in a minor official. Therefore, the Tribunal, after taking into consideration all the facts and circumstances of the case, has rightly held that there existed a large number of adverse entires in the APARs of the petitioner right from the period of his initial service to the date of his compulsory retirement. The Tribunal also held that it is true that

his earlier compulsory retirement was set aside vide order dated 28.4.83 and he was taken back in service on 23.5.84. Since, then, the petitioner had worked for about 2 years. But during this period of two years also, he was again punished by stoppage of one grade increment without cumulative effect. The Tribunal has also rightly held that orders under Rule 244 (2) of the Rajasthan Service Rules are passed in the exercise of the rights conferred on the Government to retire a Government servant, after he has served for a certain minimum period with the Government. No exception can be taken to the Government's opinion in giving compulsory retirement to the petitioner on the basis of the recommendation of the Screening Committee as it has clearly indicated that retention of the petitioner's in service was not in public interest. Thus, the finding of the Tribunal is based on sound reasonings.

In this view of the matter, the petitioner has been given compulsory retirement, after application of mind, in public interest, under Rule 244 (2) of the Rules, 1951, after the screening committee examined the entire record, with all objective considerations as well as with subjective satisfaction. It is also evident from the adverse remarks available on record that the conduct of the petitioner was not good and his work-performance was found unsatisfactory throughout his service tenure. The frequent punishments are quite sufficient to warrant his compulsory retirement under the provisions of Rule 244 (2)

of the Rules, 1951 and it cannot be said that the order of compulsory retirement was passed without application of mind or on insufficient material on record or not in public interest.

Thus, in view of the discussion made above, I find no force in the instant petition and it is accordingly dismissed.

There will be no order as to costs.

(R.P.VYAS),J.

scd.